

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

POLARIS POWERLED TECHNOLOGIES,
LLC,

Plaintiff,

v.

NINTENDO CO., LTD., and
NINTENDO OF AMERICA, INC.,

Defendants.

No. 2:22-cv-00386-JLR

**[PROPOSED] ORDER
GRANTING PLAINTIFF'S
MOTION TO STRIKE
DEFENDANTS' INVALIDITY
CONTENTIONS**

Note on Motion Calendar:
February 3, 2023

ORAL ARGUMENT REQUESTED

This matter comes before the Court on Plaintiff's Motion to Strike Defendants' Invalidity Contentions. The Court, having reviewed the motion, opposition, and reply, with supporting declarations and exhibits, and being fully advised, hereby GRANTS Plaintiff's motion and strikes the following matter from Defendants' Invalidity Contentions as described in the motion and supporting papers.

Therefore, IT IS HEREBY ORDERED that the following are hereby struck from Defendants' Invalidity Contentions:

1. Uncharted Prior Art References: All purported prior art references listed on pages 9-22 of the cover pleading for Defendants' Invalidity Contentions (Declaration of Sven

Raz in Support of Motion (“Raz Decl.”), Ex. 1) for which Defendants failed to provide an invalidity claim chart.

2. Reliance on Unidentified Prior Art and Unidentified Portions of Prior Art: All purported reservations of rights to rely on any uncharted prior art or uncited portions of charted prior art, including (1) the purported reservations of rights highlighted on pages 2-3, 5-7, and 59-63 of the cover pleading for Defendants’ Invalidity Contentions as shown in of Exhibit 1 to the Declaration of Sven Raz and (2) the following language in footnote 1 of the invalidity charts to Defendants’ Invalidity Contentions (Raz Decl., Exs. 2-51): “The chart provides representative examples of where each element of each claim is found within the prior art, at least under Polaris’ apparent construction of the claims as applied in Polaris’ infringement contentions. The cited evidence is merely illustrative, and Defendants reserve the right to cite alternative or additional evidence.”
3. Incorporation of Reference of Other Materials: Section IV of the cover pleading to Defendants’ Invalidity Contentions entitled “Incorporation by Reference.” Raz Decl., Ex. 1 at 5-7.
4. Defendants’ Obviousness Contentions: Defendants’ obviousness theories including (1) the obviousness catch-all phrases in footnote 1 and at the end of each element in the fifty claim charts of Defendants’ Invalidity Contentions (Raz Decl., Exs. 2-51); (2) Defendants’ claimed “Exemplary Obviousness Combinations” on pages 147-153 of the cover pleading of Defendants’ Invalidity Contentions (Raz Decl., Ex. 1), and (3) Defendants’ obviousness contentions regarding charted and uncharted prior art on pages 68-147 of the cover pleading of Defendants’ Invalidity Contentions (Raz Decl., Ex. 1) and any similar obviousness theories.
5. Defendants’ Deficient Invalidity Charts: All invalidity charts attached to Nintendo’s Invalidity Contentions (Raz Decl., Exs. 2-51).

6. Defendants' Enablement Allegations: Defendants' enablement allegations, including on pages 158-160 of the cover pleading of Defendants' Invalidity Contentions (Raz Decl., Ex. 1).
7. Defendants' Allegations Regarding Prior Public Use and Sales: Relating to the sixteen products listed on pages 21-22 of the cover pleading of Defendants' Invalidity Contentions (Raz Decl., Ex. 1).
8. Defendants' Prior Inventorship Allegations Pursuant to 35 U.S.C. § 102(g).
9. Defendants' Derivation Allegations Pursuant to 35 U.S.C. § 102(f).
10. Prior Art Not Made Available: The sixteen products and systems listed on pages 21-22 and 167 of the cover pleading of Defendants' Invalidity Contentions (Raz Decl., Ex. 1) that were not made available to Polaris when invalidity contentions were served.

Dated this _____ day of _____, 2023.

The Honorable James L. Robart
United States District Court Judge

1 *Presented By:*

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